IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 21.02.2006

CORAM

THE HONOURABLE MR. JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR. JUSTICE P.P.S.JANARTHANA RAJA

T.C.Nos.179 and 226 of 2001

Commissioner of Wealth Tax,
Central-I, Madras. .. Applicant

-vs-

K.Chiranjeevi .. Respondent

Reference under Section 27 (3) of the Wealth Tax Act, 1957, by order dated 27.9.2000 by the Income-Tax Appellate Tribunal, Madras Bench 'D', in R.A.Nos.414 and 415/Mds/1993 for the assessment years 1986-87 and 1987-88 (arising out of order dated 13.4.1993 of the Income Tax Appellate Tribunal in WTA.Nos.1134 & 1135 (Mds)1991 for the Assessment Years 1986-87 & 1987-88) against WTA.Nos.48 and 49/DC Spl.R.IV/91-92 order dt:30.9.91 for the Assessment Year 1986-87 - 1987-88 on the file of the office of the Commissioner of Income-Tax (Appeals) IX, Madras-34 and GIR No.701-C/87-88 PAN/GIR 47-067-PV-737/Order dt:26.3.91 for the Assessment Year 87-88 on the file of the Deputy Commissioner of W.T.Special Range IV, Madras-6.

G.I.R.No.701-C/86-87 - P.A.No.47-067-PV-7371 order dated 26.3.91 of the Deputy Commissioner of Wealth Tax, Madras-6 for the Assessment Year 1986 - 87.

For applicant : Mrs.Pushya Sitaraman,
Senior Standing Counsel.

For Respondent : Mr.Venkatnarayan
for M/s.Subbaraya Iyer,
Padmanabhan.

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J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

Mr.Venkatnarayan, learned counsel, takes notice on behalf of the respondent.

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2. In pursuance to the orders of this Court in Tax Case Nos.395 and 396 of 1997, the Income-Tax Appellate Tribunal has stated a case and referred the following question of law for our consideration:

> " Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the annuity policy taken in assessee's favour by the film producers is exempt from wealth-tax ?"

3. The respondent/assessee is a film artist. In the wealth tax proceedings relating to the assessment years 1986-87 and 1987-88, the assessee claimed exemption of an amount of Rs.17,25,000/-, which represents the annuity policies taken in his favour by the film producers. This claim was disallowed by the Assessing Officer. Aggrieved by the said order, the assessee filed appeals before the Commissioner of Income-Tax (Appeals), who upheld the claim of the assessee. On appeal by the Revenue, the Tribunal following its earlier order in the assessee's own case with regard to the wealth tax proceedings reported in 38 ITD 313 Madras for the assessment year 1985-86, held that the entire premium payable on the policies of the assessee by the producers could not be treated as the income accruing to the assessee during the period relevant to the assessment years 1986-87 and 1987-88. It is against the said order of the Income-Tax Appellate Tribunal, at the instance of the Revenue and in pursuance of the order of this Court, the Income-Tax Appellate Tribunal has stated a case and referred the question of law referred to above.

4. In this regard, it is apt to refer Section 2(e)(2)(ii), which defines "assets" and proviso to 5 (1) (vi) of the Wealth Tax Act, which read as follows:-

> 2. Definitions. - In this Act, unless the context otherwise requires, -
> (a) omitted
> (b) ...
> (c) ...
> (d) ...
> (e) "assets" includes property of every description, movable or immovable, but does not include, -
> (1) ...
> (2) in relation to the assessment year commencing on the 1st day of April, 1970, or any subsequent assessment year but before the 1st day of April, 1993, -
> (i) ...
> (ii) a right to any annuity (not being an annuity purchased by the assessee or purchased by any other person in pursuance of a contract with the assessee) in any case where the terms and conditions relating thereto preclude

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the commutation of any portion thereof into a lump sum grant;
(iii) ...

5. Exemption in respect of certain assets.--

(1) Subject to the provisions of sub-section (1A) wealth-tax shall not be payable by an assessee in respect of the following assets and such assets shall not be included in the net wealth of the assessee--
(i) ...

(ii) ...

(iii)...

(iv) ...

(v) ...

(vi) the right or interest of the assessee in any policy of insurance before the moneys covered by the policies become due and payable to the assessee:

Provided that in the case of a policy of insurance the premium or other payment whereon is payable during a period of less than ten years, the amount that shall not be included in the net wealth of the assessee under this clause shall be a sum that bears to the value of the right or interest of the assessee in the policy the same proportion as the member of years during which the premium or other payment on the policy is payable bears to ten ;

The interpretation of proviso to Section 5(1)(vi) of the Wealth Tax Act in the light of the definition of "assets" as defined under Section 2(e)(2)(ii) of the Act, came for consideration before the Division Bench of the Andhra Pradesh High Court in Commissioner of Income Tax vs. N.T.Rama Rao (Decd.) (261 I.T.R. 611), wherein the Commissioner took the view as follows:

".. that as per the provisions of section 5(1)(vi) of the Act, in a case where the amount of premium or other payment is payable during a period of less than ten years, the amount that is not includible in the net wealth of the assessee is only that sum that bears to the value of the right or interest of the assessee in the policy the same proportion as the number of such years bears to ten. The assessee, thus, would be entitled to only one tenth of the total value of the policies but not the total value of the policies as such. The Commissioner accordingly concluded that the Wealth-tax Officer's orders were erroneous and

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prejudicial to the interests of the Revenue and accordingly set aside the orders of assessment and directed the Wealth-tax Officer to recompute the net wealth of the assessee by treating the annuity policies as "assets" within the meaning of section 2(e)(2)(ii) of the Act and allow exemption under section 5(1)(vi) of the Act to the extent specified therein. The Tribunal held that the order of revision was not justified."

Further, on reference, the Tribunal, upholding the view of the Commissioner, held as follows:-

" .. after the amendment to section 2(e)(2)(ii) of the Act and insertion of the proviso under clause (vi) of Section 5(1) with effect from April 1, 1975, the exemption in respect of annuities would be available only to the extent explained in the proviso to section 5(1)(vi) of the Act irrespective of the date on which the policies were taken or annuity contracts were entered into. The decision of the Commissioner that the proviso to Section 5(1)(vi) of the Wealth Tax Act would come into play and at the best, the assessee would be entitled to only one-tenth of the total value of the policies but not to the full extent of the policies for the reason that the annuity policies were for less than ten years was absolutely correct."

5. Following the said decision of the Andhra Pradesh High Court, this Court had taken a similar view in the case of Rajinikanth vs. The Assistant Commissioner of Wealth Tax, Film Circle, in T.C.No.90 of 2002 dated 23.12.2004.

6. Since the issue is squarely covered by the above mentioned decisions, we answer the question of reference accordingly and remit the matter to the Tribunal to decide the issue as held in the above two decisions. The appeals stand disposed of accordingly. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Assistant Registrar,Income Tax Appellate Tribunal
III Floor, Rajaji Bhavan, Besant Nagar, Chennai-90.

2.The Commissioner of Income Tax (Appeals) -IX, Madras-34.

3.The Deputy Commissioner of Wealth-tax, Special Range-IV, Madras-6.

two ccs to M/s.Pushya Sitaraman, Senior Standing Counsel SR.No.8099

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